

# ***CAPITAL DEFENSE COUNSEL***

*A Division of the Office of State Public Defender*



**André de Gruy**  
**Capital Defender**

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## **MONTHLY ACTIVITIES REPORT**

November 2015

The following report of monthly activities of the Capital Defense Counsel Division of the State Public Defender is submitted in accordance with Miss. Code § 99-18-15. Attached to this Report is a docket of potential death penalty eligible cases in the circuit courts and rosters of all death penalty cases. Also attached is a spreadsheet showing statewide trial level caseload for FY 06-14.

### **Purpose**

Capital Defense was established by the state legislature to assist in trial and direct appeal of death eligible and death penalty cases in the state courts of Mississippi.

### **Mission**

Capital Defense strives to provide high quality legal representation to indigent clients consistent with the American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases.

### **Caseload**

Capital Defense is currently staffed to handle a mix of 10-15 new trial level cases per year and/or 3 new appeals per year. This assumes local counsel will be appointed. Capital Defense is currently representing 18 clients at the trial level. Capital Defense has one client who has been sentenced but remains open pending testimony. One client was convicted, sentenced to life and conviction reversed. The prosecution is not seeking death at retrial but because of a lack of local counsel Capital Defense is preparing to retry the case. Capital Defense is representing eight clients at the appeal level including four on Writ of Certiorari. These eight people are all of the direct appeal cases in Mississippi.

Across the state, there are 81 people with potential death eligible charges pending in circuit court. Fourteen are represented by retained counsel. Four of these attorneys are seeking to have their clients found indigent in order to seek public resources consistent with *Levester Brown v. State*. One person has had his death sentence reversed in post-conviction and is still represented by post-conviction pro bono counsel who may seek appointment. Counsel status is unknown in four cases. Sixty-two are represented by appointed counsel.

Of the 62 people with appointed counsel, 17 are represented by Capital Defense and six are represented by contract private counsel through the State Defender due to conflicts of interest with Capital Defense. It is believed that the prosecution is not pursuing the death penalty in most of the remaining cases but they remain on the docket until this is confirmed. However, it is believed that at least one of these cases is facing the death penalty. The local public defender has chosen to represent the client without State Defender direct assistance.

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## **Activities**

The office continues to provide technical assistance to attorneys handling cases for juvenile offenders facing life without parole sentences (JLWOP) through the JLWOP Resource Counsel project funded through a private grant. As an addendum to this report we are attaching an overview of the effect of JLWOP on indigent defense. We are also working on HB 585 implementation and assisting with the development of a mental health cases resource project. At the current time the agency has 8 fulltime employees, down from 11 at the time of the creation of the OSPD (2011). We do not intend to fill the open attorney, investigator or mitigation specialist position due to budget concerns and declining caseloads. This may result in slight short-term delays but is a necessary administrative action. If caseloads demand, this decision will be revisited and a deficit appropriation sought in January.

OPEN DOCKET  
December 1, 2015

| District | County     | Defendant |           | Counsel   |
|----------|------------|-----------|-----------|-----------|
| 1        | Lee        | Bishop    | Leah      | Appointed |
| 1        | Pontotoc   | Hughes    | Carl      | Appointed |
| 2        | Harrison   | Ambrose   | Stevie    | Appointed |
| 2        | Harrison   | Garcia    | Alberto   | Appointed |
| 3        | Lafayette  | Boone     | Derick    | Appointed |
| 3        | Lafayette  | Lyons     | Joseph    | Appointed |
| 3        | Lafayette  | Wilbanks  | Steven    | Appointed |
| 3        | Marshall   | Crebshaw  | Jeremiah  | Appointed |
| 3        | Marshall   | Euell     | Monica    | Appointed |
| 4        | Leflore    | Berry     | Dantrell  | Appointed |
| 4        | Leflore    | Meeks     | Ben III   | Appointed |
| 4        | Sunflower  | Lewis     | Roderick  | Appointed |
| 4        | Sunflower  | Triplett  | Beuncle   | Appointed |
| 4        | Sunflower  | Wallace   | Kerry     | Appointed |
| 4        | Sunflower  | Wallace   | LaMarcus  | Appointed |
| 4        | Sunflower  | Wallace   | Patrick   | Appointed |
| 7        | Hinds      | Harris    | Detrich   | Appointed |
| 7        | Hinds      | Johnson   | Jordan    | Appointed |
| 7        | Hinds      | Johnson   | Jordan    | Appointed |
| 7        | Hinds      | Johnson   | Quenten   | Appointed |
| 7        | Hinds      | Kees      | Jerry     | Appointed |
| 7        | Hinds      | Menifield | Tiffany   | Appointed |
| 7        | Hinds      | Morrison  | Octavious | Appointed |
| 7        | Hinds      | Rodgers   | Michael   | Appointed |
| 7        | Hinds      | Rodgers   | Patrick   | Appointed |
| 7        | Hinds      | Shepard   | Donte     | Appointed |
| 7        | Hinds      | Smith     | Gregory   | Appointed |
| 7        | Hinds      | Stewart   | Alonzo    | Appointed |
| 7        | Hinds      | Thompson  | Dewayne   | Appointed |
| 10       | Lauderdale | Houston   | JaQuis    | Appointed |
| 10       | Lauderdale | McCallum  | Juwan     | Appointed |
| 10       | Lauderdale | Seals     | Derrick   | Appointed |
| 10       | Lauderdale | Steele    | Marcus II | Appointed |
| 11       | Bolivar    | Johnson   | Jayvious  | Appointed |
| 11       | Coahoma    | Collins   | Cedric    | Appointed |
| 12       | Forrest    | Gillett   | Roger     | Appointed |
| 13       | Simpson    | Keys      | Kendrayla | Appointed |
| 15       | Jeff Davis | Johnson   | Shanice   | Appointed |
| 15       | Jeff Davis | Love      | Malcolm   | Appointed |
| 15       | Jeff Davis | Spivey    | Joseph    | Appointed |
| 15       | Lamar      | Taylor    | Timothy   | Appointed |
| 15       | Lawrence   | Peyton    | Kegerran  | Appointed |

OPEN DOCKET  
December 1, 2015

| District | County    | Defendant    |             | Counsel   |
|----------|-----------|--------------|-------------|-----------|
| 15       | Lawrence  | Watts        | Darion      | Appointed |
| 16       | Clay      | Mullins      | Charles     | Appointed |
| 16       | Clay      | Robinson     | Avis        | Appointed |
| 16       | Lowndes   | Bankhead     | Derrick     | Appointed |
| 16       | Lowndes   | Beard        | Omar        | Appointed |
| 16       | Lowndes   | Chambers     | Patrick     | Appointed |
| 16       | Lowndes   | Merriweather | Cameron     | Appointed |
| 16       | Lowndes   | Ross         | Michael     | Appointed |
| 16       | Lowndes   | Taylor       | Joshua      | Appointed |
| 16       | Lowndes   | Williams     | Cortez      | Appointed |
| 16       | Noxubee   | Reed         | Elizabeth   | Appointed |
| 16       | Noxubee   | Shumaker     | Jonathan    | Appointed |
| 16       | Noxubee   | Williams     | Justin      | Appointed |
| 19       | Greene    | McCarty      | Welford     | Appointed |
| 19       | Jackson   | Street       | Scotty      | Appointed |
| 20       | Madison   | Archie       | Joshua      | Appointed |
| 20       | Madison   | Clark        | Teaonta     | Appointed |
| 20       | Madison   | Clark        | Tony        | Appointed |
| 20       | Rankin    | Stanford     | Zachary     | Appointed |
| 22       | Copiah    | Hollie       | Erik        | Appointed |
| 16       | Lowndes   | Hodges       | Quintez     | Pro Bono  |
| 1        | Itawamba  | Kelly        | Demarco     | Q         |
| 1        | Itawamba  | McClenton    | Kyra        | Q         |
| 1        | Itawamba  | Metcalf      | Tyjuan      | Q         |
| 1        | Itawamba  | Thomas       | Tyandre     | Q         |
| 1        | Itawamba  | Johnson      | Tonisha     | Retained  |
| 2        | Hancock   | Lewis        | Orin        | Retained  |
| 2        | Harrison  | Williams     | Jalen       | Retained  |
| 7        | Hinds     | Beasley      | Javondus    | Retained  |
| 7        | Hinds     | Clements     | Dymond      | Retained  |
| 7        | Hinds     | Perkins      | Lucious Jr. | Retained  |
| 11       | Bolivar   | Hodges       | Jamario     | Retained  |
| 11       | Bolivar   | Vaughn       | Fabian      | Retained  |
| 13       | Simpson   | Varnado      | Cutrell     | Retained  |
| 14       | Lincoln   | Brown        | Jamaal      | Retained  |
| 16       | Oktibbeha | Brooks       | Charleka    | Retained  |
| 16       | Oktibbeha | Brown        | Milton      | Retained  |
| 16       | Oktibbeha | Mason        | Phillip     | Retained  |
| 19       | George    | Harper       | Nicholas    | Retained  |

## DIRECT APPEAL ROSTER

|                      | Last Name | First Name | County     |
|----------------------|-----------|------------|------------|
| Certioari            | Cox       | David      | Union      |
|                      | Dickerson | David      | Copiah     |
|                      | Flowers   | Curtis     | Montgomery |
|                      | Ronk      | Timothy    | Harrison   |
| Rehearing            |           |            |            |
| Argued               |           |            |            |
| Briefed              |           |            |            |
| Appellee Brief Due   | Evans     | Timothy    | Hancock    |
|                      | Hutto     | James III  | Hinds      |
| Appellant Brief Due  | Blakeney  | Justin     | Jones      |
| Record Pending       | Ambrose   | Abdur      | Harrison   |
| Motion for New Trial |           |            |            |

## State Post-Conviction Roster

Rehearing

Appeal from Circuit Court

|         |         |           |
|---------|---------|-----------|
| Carr    | Anthony | Quitman   |
| Russell | Willie  | Sunflower |
| Scott   | Kevin   | Bolivar   |

Remand to Circuit Court

|           |          |            |           |
|-----------|----------|------------|-----------|
| Brown     | Sherwood | DeSoto     | successor |
| Bennett   | Devin    | Rankin     |           |
| Conner    | Ronnie   | Lauderdale | successor |
| Havard    | Jeffrey  | Adams      | successor |
| Howard    | Eddie    | Lowndes    | successor |
| Manning   | Willie   | Oktibbeha  | successor |
| Pitchford | Terry    | Grenada    |           |
| Smith     | Clyde    | Leflore    |           |
| Walker    | Alan     | Harrison   | successor |
| Wilson    | William  | Lee        |           |

Motion Filed

|            |            |           |           |
|------------|------------|-----------|-----------|
| Batiste    | Bobby      | Oktibbeha |           |
| Corrothers | Caleb      | Lafayette |           |
| Crawford   | Charles    | Tippah    | successor |
| Galloway   | Leslie III | Harrison  |           |
| Goff       | Joseph     | George    |           |
| Howell     | Marlon     | Union     | successor |
| Jordan     | Kelvin     | Clarke    | successor |
| Keller     | Jason      | Harrison  |           |
| Knox       | Steve      | Amite     | successor |
| Le         | Thong      | Jackson   | successor |
| Walker     | Derrick    | Lee       |           |

Motion Due

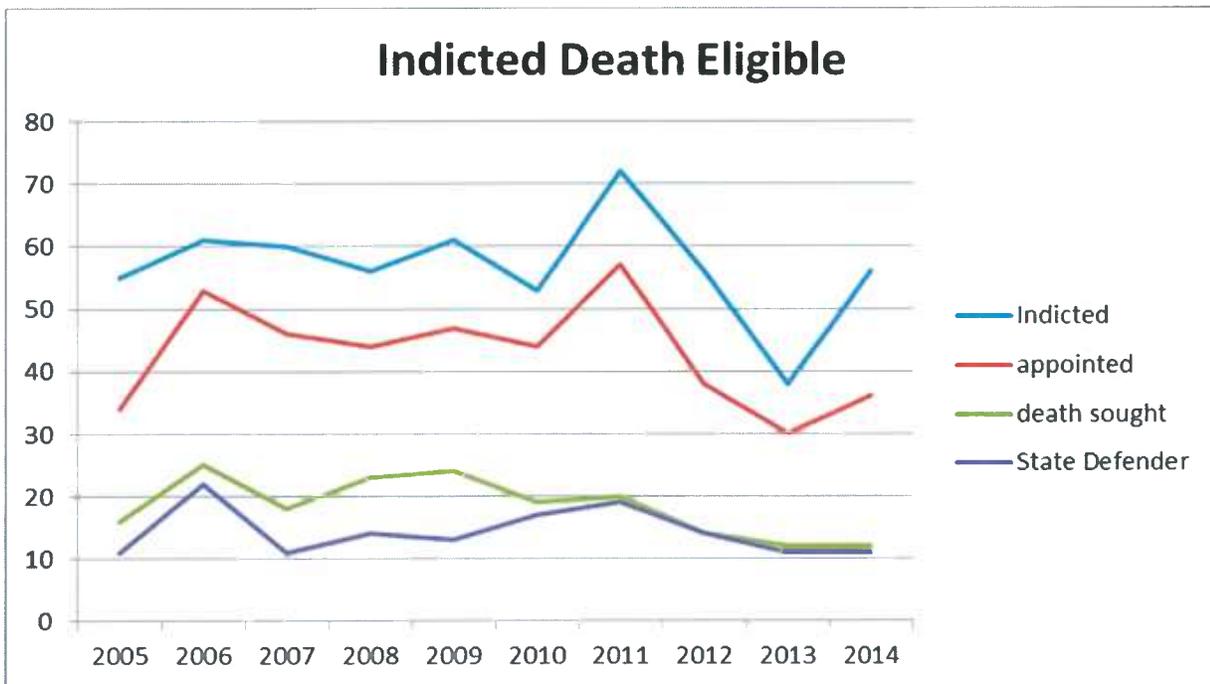
|           |         |            |           |
|-----------|---------|------------|-----------|
| Brown     | Joseph  | Adams      | successor |
| Cox       | David   | Union      |           |
| Dickerson | David   | Copiah     |           |
| Flowers   | Curtis  | Montgomery |           |
| Ronk      | Timothy | Harrison   |           |
| Underwood | Justin  | Madison    | successor |

## Federal Court Roster

| COURT                                   | Last Name  | First Name | County   | Docket #          |        |
|---|------------|------------|----------|-------------------|--------|
| <b>Supreme Court</b>                    |            |            |          |                   |        |
| <br>                                    |            |            |          |                   |        |
| <b>Fifth Circuit Court of Appeals</b>   |            |            |          |                   |        |
|   | Chamberlin | Lisa Jo    | Forrest  | 15-70012          |        |
|   | Simon      | Robert     | Quitman  | 15-70002          |        |
| <br>                                    |            |            |          |                   |        |
| <b>Northern District of Mississippi</b> |            |            |          |                   |        |
|   | Brown      | Sherwood   | DeSoto   | 3:01-cv-00197-SA  | STAYED |
|   | Howard     | Eddie      | Lowndes  | 3:07-cv-00010-WAP | STAYED |
|   | Howell     | Marlon     | Union    | 5:15-cv-105-DMB   |        |
| <br>                                    |            |            |          |                   |        |
| <b>Southern District of Mississippi</b> |            |            |          |                   |        |
|   | Billiot    | James      | Hancock  | 1:86-cv-00549-TSL | STAYED |
|   | Brown      | Joseph     | Adams    | 5:12-cv-00091     | STAYED |
|   | Brown      | Xavier     | Lamar    | 2:07-cv-00049-HTW |        |
|   | Chase      | Ricky      | Copiah   | 3:2015-cv-00799   |        |
|   | Grayson    | Blayde     | George   | 1:04-cv-00708-DPJ |        |
|   | Havard     | Jeffrey    | Adams    | 5:08-cv-00275-KS  | STAYED |
|   | Jordan     | Kelvin     | Clarke   | 2:13-cv-301       | STAYED |
|   | Knox       | Steve      | Amite    | 5:13-cv-241       | STAYED |
|   | Le         | Thong      | Jackson  | 1:07-cv-01128-LG  | STAYED |
|   | Moffett    | Eric       | Hinds    | 3:14-cv-639-CWR   |        |
|   | Powers     | Stephen    | Forrest  | 2:07-cv-00020-HTW |        |
|   | Thorson    | Roger      | Harrison | 1:12-cv-00067-DPJ |        |
|   | Underwood  | Justin     | Madison  | 3:06-cv-00273-DPJ | STAYED |
|   | Walker     | Alan       | Harrison | 1:97-cv-00029-KS  | STAYED |

Trial level capital murder cases opened statewide by fiscal year; tracked by date of arrest

|                   | people<br>charged | juveniles | dismissed/<br>reduced | retained | appointed<br>possible<br>death<br>eligible | conflicts | death<br>sought | conflicts | potential<br>CDC staff<br>cases | actual<br>CDC<br>Staff<br>cases | actual<br>State<br>Contract |
|-------------------|-------------------|-----------|-----------------------|----------|--|-----------|-----------------|-----------|---------------------------------|---------------------------------|-----------------------------|
| FY 2005           | 74                | 10        | 9                     | 21       | 34   | 9         | 16              | 3         | 13                              | 11                              | 0                           |
| FY 2006           | 91                | 5         | 25                    | 8        | 53   | 11        | 25              | 2         | 23                              | 21                              | 1                           |
| FY 2007           | 92                | 10        | 22                    | 14       | 46   | 12        | 18              | 3         | 15                              | 11                              | 0                           |
| FY 2008           | 83                | 8         | 19                    | 12       | 44   | 16        | 23              | 7         | 16                              | 14                              | 0                           |
| FY 2009           | 86                | 10        | 15                    | 14       | 47   | 15        | 24              | 5         | 19                              | 13                              | 0                           |
| FY 2010           | 74                | 2         | 19                    | 9        | 44   | 12        | 19              | 4         | 15                              | 13                              | 4                           |
| FY 2011           | 96                | 6         | 18                    | 15       | 57   | 18        | 20              | 4         | 16                              | 16                              | 3                           |
| FY 2012           | 79                | 8         | 15                    | 18       | 38   | 12        | 14              | 2         | 12                              | 12                              | 2                           |
| FY 2013           | 70                | 10        | 22                    | 8        | 30   | 10        | 12              | 2         | 10                              | 9                               | 2                           |
| FY 2014           | 81                | 6         | 19                    | 20       | 36   | 11        | 12              | 3         | 9                               | 8                               | 3                           |
| 5-year<br>average | 80.00             | 6.40      | 18.60                 | 14.00    | 41.00                                      | 12.60     | 15.40           | 3.00      | 12.40                           | 11.60                           | 2.80                        |



Juvenile Life without Parole (JLWOP) – the effect of Miller v. Alabama on the delivery of indigent defense services in Mississippi. (December 2015)

### Background

In 2005 the Supreme Court of the United States held that sentencing a person to death for a crime that occurred prior to their 18<sup>th</sup> birthday violated the federal constitution. Roper v. Simmons, 543 U.S. 551 (2005). In 2010 the Court held sentencing juvenile offenders to life without parole (JLWOP) for non-homicide offenses violated the federal constitution. Graham v. Florida, 560 U.S. 48, 130 S.Ct. 2011 (2010).

In June 2012 the Court held that automatic life without parole sentences for juvenile offenders convicted of homicide offenses violated the federal constitution. Miller v. Alabama, 132 S.Ct. 2455 (2012).

In June 2013 the Mississippi Supreme Court recognized that under Mississippi's parole law enacted in 1994 and 1995, all life sentences are without parole. Parker v. State, 119 So.3d 987 (Miss. 2013). Thus the Parker Court held that Miller requires individual determinations of parole eligibility in all capital murder and murder cases before a life sentence without parole can be imposed. Parker applies to all juvenile offenders serving a life sentence at the time Miller was decided as well as all juvenile offenders convicted since. Jones v. State, 122 So3d 698 (Miss. 2013).

In light of these decisions every juvenile homicide offender is now entitled to a sentencing or resentencing hearing and entitled to counsel for that hearing. See Perryman v. State, 120 So.3d 1048 (Miss. Ct. App. 2013). Because life without parole is the equivalent of a death sentence when imposed on a juvenile offender, see Miller, equivalent procedures must be in place to ensure the defendant's constitutional rights are protected. Dycus v. State, No. 2012-M-02041-SCT (Order vacating sentence and remanding for new sentencing hearing before a jury pursuant to Miss. Code § 99-19-101) (Sept. 17, 2014).

This will require mitigation investigation and presentation including the use of experts, particularly in the field of child development. See Davis v. State, 87 So.3d 465 (Miss. 2012) (death sentence vacated where counsel failed to investigate and present mitigation).

Because these juvenile homicide cases are not "death penalty eligible offenses" Capital Defense Counsel cannot provide direct representation. Miss. Code § 99-18-5. However, under the State Defender's authority to utilize employees of one division in another division, Capital Defense has assisted the Public Defender Training Division in providing training and technical assistance to public defenders and volunteer counsel handling JLWOP cases. This limited assistance benefits the local defenders and counties but falls far short of ensuring they can meet the new constitutional mandate. This development increases the need for comprehensive indigent defense reform in Mississippi.

## Scope of the Problem

Eighty-six people<sup>1</sup> in Mississippi were sentenced to automatic life without parole sentences for crimes occurring when they were juveniles (JLWOP sentences). Four were on direct appeal when Miller was decided and 82 have since filed post-conviction motions raising Miller claims.

Of the four cases on direct appeal when Miller was decided, two had their convictions reversed and two had the JLWOP sentence vacated. In one of the two reversals the defendant was acquitted on retrial and the other plead to a reduced charge of manslaughter. One person whose sentence was vacated, Lester Parker, has been resentenced to life with parole. The second is pending resentencing

The JLWOP sentence has been vacated in 35 of the 84 post-conviction cases. Fifteen people have been resentenced to life with parole. Three resentenced to LWOP. Seventeen are before the trial court pending resentencing. The remaining 49 post-conviction cases are pending before a circuit court on Motion to Vacate.

There were 16 potential JLWOP cases pending pre-trial when Miller was decided. Two were sentenced to automatic JLWOP before Parker was decided and are counted in the 84 post-conviction cases noted above. One has since been sentenced to JLWOP for murder. The others have been convicted of lesser charges or had charges dismissed.

Fifty new JLWOP eligible cases have been filed since July 1, 2012. Twenty-nine of these cases remain open. Of the 21 closed cases one person was sentenced to JLWOP bringing the total LWOP sentences post-Parker to five.

It is anticipated that there will be 15 new potential JLWOP cases indicted each year with most needing appointed counsel. In addition it is anticipated that the local public defenders will be expected to handle the bulk of the post-conviction cases still pending in post-conviction when resentencing is ordered. The total number of potential cases today is 98.

## The Bottom Line

Even the most conservative estimate of the cost to counties to provide constitutionally adequate counsel, investigators and experts in the pending cases would be in the millions. Assuming *pro bono* or retained counsel handle 25%, the counties will have to provide the cost in about 75 cases, some almost 20 years old. Based on the average costs of death penalty cases (approximately \$75,000/case) it would cost the counties over \$5,500,000 to handle the backlog and an additional \$850,000/year to handle future cases. This cost does not include the cost of empaneling juries.<sup>2</sup>

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<sup>1</sup> Two people have two sentences imposed in separate cases so the total number of cases is 88.

<sup>2</sup> See Vicksburg Post Editorial, April 1, 2015, regarding retrial of Vega case.